



U.S. Department of Justice

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US EPA RECORDS CENTER REGION 5



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Washington, D.C. 20530

July 17, 1985

Robert Polack, Esq.
Vice President & General Counsel
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware Street
Indianapolis, IN 46204

Re: United States v. Reilly Tar & Chemical Corp.
No. 4-80-469 (D. Minn.)

Dear Rob:

We are in receipt of your letters of July 10, 1985 and July 15, 1985, and Paul Bitter in EPA Region V has received the design plans and specifications for the proposed granular activated carbon (GAC) plant at wells SLP 10 and 15. We appreciate the submittal of the design plans. We further appreciate the commitment made by Reilly in your letter of July 15 to construct the GAC plant. Although your July 15 letter does not mention a date for completing construction, your July 10 letter references the deadlines which appear in the July 3 draft of the Remedial Action Plan (RAP), which provides, in section 4.1.2, a construction deadline of October 15, 1985 plus an additional day for each day the design is reviewed by EPA and MPCA. Therefore, we conclude from your two letters that Reilly has committed to construct the GAC plant by that deadline.

In reliance upon that commitment, we are recommending to EPA that it not go ahead and build the GAC plant itself. We are further recommending that the funds set aside by EPA to build the GAC plant be reallocated to some other CERCLA project, not associated with this case. Such a reallocation would mean that if Reilly failed to honor the commitment in your July 15 letter, EPA would not have funds available to build the GAC plant until after the new fiscal year, which starts October 1. Further, in reliance of the commitment in your July 10 and July 15 letter to work through the remaining issues toward a comprehensive settlement, we are recommending

that EPA also reallocate the funds which it set aside to undertake the remedial investigation/feasibility study ("RI/FS") at the former Reilly plant site, since the July 3 draft RAP would provide for Reilly to undertake the substantial equivalent of the RI/FS. If we do not close on a settlement, then funds for the RI/FS would have to be reallocated in the next fiscal year.

In your July 10 letter, you ask us to sign a statement that the "review procedures and timetables relating to the granular activated carbon plant at St. Louis Park wells 10/15 included in the draft consent decree and remedial action plan dated June 13, 1985 (revised July 3, 1985) shall govern until such documents are entered by the court." We lack the authority to make this agreement since it amounts to a partial settlement of this lawsuit. In order for the United States, acting on behalf of the U.S. Environmental Protection Agency, to settle all or part of this lawsuit any settlement document must be signed by the Assistant Attorney General for the Land and Natural Resources Division and the United States Attorney for the District of Minnesota, at the Department of Justice, and by the Assistant Administrator for Enforcement and Compliance Monitoring and the Regional Administrator, Region V, at EPA. Moreover, no such settlement would be effective until after the 30 day public comment period mandated by 28 C.F.R. §50.7, unless that comment period was formally waived by the Assistant Attorney General. Accordingly, we lack the authority to make the agreement requested in your July 10 letter.

However, consistent with what we have told you throughout the settlement negotiations, we intend to recommend to our supervisors that the Department of Justice and EPA act in accordance with such provisions of the proposed Consent Decree and RAP which we have negotiated with Reilly. However, Reilly should be aware that until a consent decree is lodged with the court and the United States has responded to any comments received during the public comment period, nothing in the proposed consent decree or RAP are binding on the United States.

Sincerely yours,

Assistant Attorney General
Land and Natural Resources Division

By: David Hird, Attorney
Environmental Enforcement Section

Robert E. Leininger
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region V

cc: The Honorable Crane Winton
Becky A. Comstock, Esq.
Stephen Shakman, Esq.
Elizabeth Thompson, Esq.
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